



Report Your Hours

Article by Cynthia Burkett, Law Office of Cynthia M. Burkett

The State Bar of Texas Board of Directors adopted a revised Pro Bono Policy on September 22, 2000, which establishes a goal of 50 hours of pro bono legal services to the poor each year for each Texas attorney. The revised Pro Bono Policy also established an annual reporting system so that each Texas attorney can report the pro bono legal services provided each year.

If all 305 of our DCBA members meet the goal of 50 hours per year, that would be 15,250 hours that our members contribute to help our fellow Texans in need. At the 2009 Bar Leaders Conference, the following information was provided to assist us in knowing what types of services qualify as pro bono legal services:

- a. The direct provision of legal service to the poor without the expectation of compensation, or at a substantially reduced fee, whether civil or criminal (i.e. representing a low-income person who comes into your office seeking help with a legal matter);
- b. Services without a fee, or at a substantially reduced fee, related to simplifying the legal process for, or increasing the availability and quality of legal services to poor persons (i.e. training or mentoring non-family law attorneys to handle family law cases for low-income individuals);
- c. Legal services without a fee, or at a substantially reduced fee, rendered to charitable, public

- interest organizations with respect to matters or projects designed predominantly to address the needs of poor persons (i.e. providing the legal services necessary for a nonprofit community group to develop a low-income housing project);
- d. Legislative, administrative or systems advocacy services without a fee, or at a substantially reduced fee, provided on behalf of poor persons (i.e. representing low-income elderly persons before the Public Utility Commission regarding the need for lifeline utility services);
- e. Unsolicited, involuntary appointed representation of indigent citizens in criminal or civil matters. Appointments in criminal cases are not considered involuntary under the Fair Defense Act; however, they may count as "substantially reduced fee" work (i.e. representing an indigent parent in a termination of parental rights suit filed by the Texas Department of Family and Protective Services as a result of an unsolicited, involuntary court appointment).

In 2007, the State Bar of Texas surveyed 500 attorneys regarding pro bono services. The main findings were as follows:

- 58% of in-state attorneys provided an average of 48.5 hours of pro bono legal or indirect legal services that benefited the poor.

- 29.7% provided an average of 54.0 hours of substantially reduced fee legal services to the poor.
- 79% performed free legal services in civil matters.
- 37% performed free legal services for charitable, public-interest organizations.
- 24.8% performed free legal services to simplify or increase availability and quality of legal services.
- 19% performed free legal services in criminal matters.
- 13% performed free legal services for unsolicited court appointments
- 8% performed free legal services for legislative, administrative or systems advocacy.
- 33.3% made financial contributions or paid out-of-pocket expenses related to legal services to the poor.

On behalf of the DCBA pro bono committee, I want to encourage each of you to not only engage in pro bono work, but to also report the work that you do to the State Bar of Texas. Please note that the hours lawyers spend volunteering for DCAP mediations qualify as reportable hours.

What's Inside

<i>From the President.....</i>	<i>2</i>
<i>From the Sections.....</i>	<i>3</i>
<i>For Your Practice.....</i>	<i>4</i>
<i>From our Sponsors.....</i>	<i>6</i>
<i>Announcements</i>	<i>8</i>



From the President

Do you *live to work*, or *work to live*? Carefully evaluate your answer. If you live to work, you may be a dedicated, productive professional. If you work to live, you may be a well-rounded person with many interests. The trick is to try and achieve balance so that your life represents some of both philosophies and you are, overall, a successful professional who can and does pursue outside interests in your free time.

In reality, this is difficult. There are many elements that fit together to provide an optimum balance between work and life. In this age of wireless access and personal data assistants, most of us have sat down to answer a quick email to later realize we have put in two hours of work while our family waited. If circumstances get away from you too often, before you realize it, you are just living to work, or just working to live. I challenge you to practice the following skills over the next three months and see if, at the end, you have a better work/life balance than when you started.

Utilize time management

Being able to outline the tasks you plan to achieve in a day and sticking with your outline will help you accomplish what must get done while helping you make sure you include a balanced variety of activities in your day (or week).

Create good boundaries

If you have become available to your clients 24/7 on the cell phone or the BlackBerry, make sure you have not shifted your balance too far onto the 'live to work' side of the spectrum. It may be that you need to tell your clients you are unavailable after hours, or are available only at certain times or for emergencies. Likewise, set times during the work day when you commit to focus only on what needs to happen at the office, and not worry about whether you have made the dog's vet appointment or bought your daughter's ballet shoes.

Pick an activity, any activity

If you are in a rut of work, work, work and have no outside activities, pick one. Anything that interests you will do—join a book club, start Celtic dancing, commit to going to



Darcy Loveless, President

one cultural or sporting activity with your family every six weeks. Before you know it, that activity will become an oasis from work. You will come to value it and start to achieve balance.

Stop an activity, any activity

If you have added too many activities over time so that you are going non-stop and can never finish your work, pick one activity to stop for thirty days and see if your work/life balance improves.

Exercise

I hear it helps with all facets of your life, from improving your overall health and energy, to helping you focus and balance your life. Adding some into my life is my next step toward achieving balance. Good luck to all of you.

DCBA Officers

President, *Darcy Loveless*
Immediate Past President,
Hugh Coleman
President-Elect, *Don R. White, Jr.*
Vice President, *Dena A. Reecer*
Treasurer, *Duane L. Coker*
Secretary, *Theodore D. Ogilvie*
CLE Director, *Joe Zellmer*

DCBA Directors

*Travis Biggs, Cynthia Burkett,
Gina Hill, Theodore D. Ogilvie,
Amie Peace, John Rentz, Patricia
Ryan, Joe Zellmer*

DCBA Committee Chairs

Courts Committee, *Dena Reecer*
Library Board of Governors,
Gina Hill
Social Committee, *Travis Biggs*
CLE Committee, *Joe Zellmer*
Communications Committee,
*Patricia L. Ryan and
Amie Peace*
Fee Dispute, *John Rentz*
Pro Bono, *Cynthia Burkett*
Membership, *Amie Peace*
Awards, *Darcy Loveless*

Planning Committee, *Don R.
White, Jr.*
Local Rules, *Dena Reecer*

DCBA Membership Your DCBA Membership includes

- Free and discounted CLE programs
- Monthly luncheon & happy hour
- Networking opportunities
- Listing on the bar website, including photo, two practice areas, and a link to your website

Your DCBA Sections

- Trial Lawyer's Association
- Family Law Section
- Greater Denton County Young Lawyers Association
- Real Estate, Trust, and Probate Law Section

For more information see our website: <http://dentonbar.com>

2009 DCBA Christmas Party

Story by Gina Hill, Hill and Hill



The holiday season was kicked off in style on December 4 with a much anticipated holiday party co-hosted by the DCBA, the law offices of Wood, Thacker & Weatherly, and Griffin & Jones. The festivities were well-attended by attorneys from around the county who enjoyed food, drink and good company. If you missed this year's party, please plan to attend in 2010. The more the merrier!!

Monthly Meetings

Collaborative Professionals

DCCP will meet at **12:00 PM** on Tuesday, **February 2** at Oakmont Country Club located in Corinth.

Family Law

Family Law will meet at **5:30 PM** on Monday, **February 22**, at Giuseppes located at 821 N. Locust St. in Denton.

GDCYLA

GDCYLA will meet at **11:45 AM** on Thursday, **February 4** at Johnny Carino's located at 1516 Centre Place Dr. in Denton.

GDCYLA will meet for happy hour at **5:30 PM** on Thursday, **February 11** at the Loophole located at 119 W. Hickory St. in Denton.

Paralegals

DCPA will meet at **12:00 PM** on Thursday, **February 25** at Oakmont Country Club located in Corinth.

REPTL

REPTL will meet at **12:00 PM** on Wednesday, **February 17** at Oakmont Country Club located in Corinth.



2010 DCBA Probate, Guardianship and Ad Litem Law Seminar

When:

February 5, 2010, 8:00 AM–4:30 PM

Where:

Oakmont Country Club, 1901 Oakmont Dr. in Corinth

Registration:

\$75 before February 1st, and \$100 after. Contact Michelle Houston at mhouston@dentonbar.com for more information.

Advanced Mediation Training in Family Law Save the Date

Where:

Wildwood Inn
2602 Lillian Miller
Denton, Texas 76210

When:

April 7–9, 2010

CLE:

24 hrs CLE/3 hrs Ethics


Registration:

\$450.00, DCAP will provide a \$100 refund to those who complete the course and sign up for 4 mediations during the next DCAP Mediation year. RSVP to Jkerestine@hbwvlaw.com.

Course Trainers:

Coye Conner and Julia Kerestine

GILLIGAN'S ISLAND
A Three Day Tour



DCBA'S 2010
BENCH BAR CONFERENCE

May 21-23, 2010

Where:
Tanglewood Resort & Conference Center
290 Tanglewood Cir, Pottsboro, TX 75076

Registration:
This year's cost is \$495 for members and \$695 for any non-member or guest, meals included. Registrants may bring an in-room guest (including children) for \$75. For attorney room-shares or attorney spouses also participating in the CLE, cost will be \$395/each. For a complete form or to be a sponsor, please contact your conference chair and cruise director, Kim Killebrew at 940-436-8000 or kpk@nakfamilylaw.com. Please make checks payable to Denton County Bar Association.

Attorney Ad Litem Training for Child Abuse & Neglect Cases

What:

Training for attorney ad litem

Topics to include:

- "Children Aging Out of Care"
- Updates from the 81st Legislative Session
- Updates from the Fostering Connections to Success Act and Increasing Adoptions Act
- Roles and Duties of the attorney ad litem

Speakers to include a panel of youth who have aged out of foster care. Luncheon Speaker will be Justice Harriet O'Neill on Permanent Judicial Commission for Children, Youth and Families (PJCCYF)

When:

Friday, April 9, 2010, 9:00 AM–4:00 PM

Where:

Oakmont Country Club, 1901 Oakmont Dr. in Corinth

Registration:

To register and for more information, please contact Brenda Sweeten at bsweeten@casadenton.org or call 940-243-2272, ext. 104. CLE and CEUs will be available.

Consulting Vs. Testifying Experts: Is There a Problem?

John A. Zervopoulos, Ph.D., J.D., ABPP, www.psychologylawpartners.com

Ms. Jones, a prominent lawyer, retained psychologist Dr. Smith as an expert in a contentious case. Dr. Smith reviewed all case documents, discussed case themes with Ms. Jones, and helped Ms. Jones develop questions to select a sympathetic jury. Later, Ms. Jones called Dr. Smith to testify at trial. Are Dr. Smith's actions in his consulting and testifying expert roles in this case a problem?

It depends. Mixing these expert roles may seem like a problem, but the line distinguishing those roles, at times, may be unclear. Not attending to Dr. Smith's expert role distinctions may have significant implications for Ms. Jones, Dr. Smith, and the Court.

The familiar distinctions between consulting and testifying expert roles suggest potential problems. The consulting expert, retained by the lawyer to assist with the case, does not testify at trial and is not subject to deposition or other discovery. In contrast, the testifying expert's mental impressions and opinions, with the facts, methods, and materials used to derive those opinions are discoverable. Tex. R. Civ. P. 192.7(c) and (d).

Apart from certain capital murder cases (see *Rey v. State*, 897 S.W.2d 333 (Tex. Crim. App. 1995)), two key questions arise when lawyers blur the consulting and testifying expert roles in a case: What are the consequences of blurring the roles? Is there a line that distinguishes the two roles?

Consequences of blurring consulting and testifying expert roles impact two legal issues:

protection of the lawyer's work-product, and assurance to the court that the testifying expert's opinions are reliable. While the work-product doctrine shields the consulting expert's work from discovery, Tex. R. Civ. P. 192.5 (b)(1), this protection may be removed on those matters if the testifying expert reviews the work or thinking of the consulting expert; the testifying expert, if asked, must disclose everything reviewed that informed the opinion. Tex. R. Civ. P. 192.3 (e). In federal court, "data and information considered by the witness ..." is discoverable—ostensibly, a larger net than just "reviews." Fed. R. Civ. P. 26 (a)(2)(B)(ii).

In addition, blurring consulting and testifying roles may raise legitimate questions about the reliability of the testifying expert's opinion. Tex. R. Evid. 702 notes that testifying experts participate in a case to "assist the trier of fact to understand the evidence or to determine a fact in issue." The testifying expert's purpose is not to advocate for a party or testify as the sponsoring lawyer's alter-ego. *Trigon v. U.S.*, 204 F.R.D. 277, 295 (E.D. Va. 2001). Unfortunately, testifying experts may offer opinions on almost any theory, regardless of its merit, and for "the proper fee." *duPont v. Robinson*, 923 S.W.2d 549, 553 (Tex. 1995). To deter this, trial judges have the responsibility to ensure that expert testimony shows some indicia of reliability; unreliable, untrustworthy testimony cannot assist the court. *Id.* Lawyers should challenge the

reliability of an expert's testimony if the expert cannot show sufficient "independence" from sponsoring lawyers to justify his or her role as one that "assists" the court.

Despite the risks of blurring roles, the line that distinguishes consulting from testifying experts is often unclear. For instance, consider Dr. Smith in our example—a testifying expert who also helped Ms. Jones, the lawyer, to prepare and strategize her case. Or, consider the testifying expert who only informs the lawyer about the strengths and weaknesses of an opposing expert's report. Dr. Smith's example clearly shows an expert blurring the roles; the trial judge can legitimately question whether Dr. Smith's opinion as a testifying expert is independent enough from the legal team to "assist" the court by offering reliable, trustworthy testimony—a Robinson-Daubert concern. The latter example is less clear: one may argue that when the testifying expert informs the sponsoring lawyer about the quality of an opposing expert's report, such information may highlight, by contrast, the reliability and trustworthiness of the testifying expert and, thus, "assist" the court.

How should lawyers address the different expert roles in a case?

- Keep your consulting and testifying experts apart. Just like lawyers should assume that anything they tell testifying experts is discoverable, anything testifying experts review or

Consulting continued on page 6.

From our Sponsors

James L. (Jim) Young

MEDIATION • ARBITRATION

*General Counsel & Corporate
Generalist – 24 Years*

*Insurance & Reinsurance, Publishing,
General Commercial*



**An Experienced Navigator... Charting The
Course Through Risk To ResolutionSM**



6600 LBJ Freeway, Suite 175 • Dallas, Texas 75240
Direct (214) 723-7860 • www.outsourcegc.com
JYoung@risk-navigator.com
www.risk-navigator.com

Available Statewide

Consulting continued from page 5.

- consider from consulting experts is discoverable.
- Always ask opposing testifying experts if they have reviewed or considered materials from a consulting expert in the case or have even talked to another expert in the case.
 - Think twice if you decide to designate an expert with whom you have consulted in your case as a testifying expert. Many courts will waive the work-product privilege on matters you previously discussed with the expert.
 - Especially attend to the possibility that testifying experts who are “professional” advocates in their work outside the courtroom are blurring expert roles. Many of these experts get overly involved with the lawyers and clients who retain them. Their testimony may reflect their advocacy agendas rather than reliable, trustworthy testimony about the case at hand that will assist the court.

John A. Zervopoulos, Ph.D., J.D., ABPP is a forensic psychologist and lawyer who directs PsychologyLaw Partners, a national forensic consulting service. He can be contacted at jzerv@psychologylawpartners.com or by phone at 972-458-8007.

Denton County Property Records at Your Fingertips

Attention ATTORNEYS:

Title Resources of North Texas is opening its abstract plant to attorneys for non-insured, informational-purposes-only property research. Choose full service, assisted service or do-it-yourself research. Searches are available for current owner, names, deed, foreclosures, liens, historical title, mineral rights, document retrievals and more.

Call **940-381-1006** today for details or a tour of our abstract plant.

We are also a full-service title insurance company.



Fax: **940-382-8827** www.trnt.net
1112 Dallas Drive, Suite 402, Denton, TX 76205



YOUR FIRST CHOICE IN INVESTMENT & TRUST BANKING

- WILLS & TRUSTS
- INVESTMENT MANAGEMENT
- RETIREMENT ACCOUNTS



CAROL MILLS CHRISTIAN
VICE-PRESIDENT

Downtown Denton

400 WEST OAK • 940-349-5444

www.F-S-B.com

DENTON • CORINTH • GAINESVILLE
VALLEY VIEW • LAKE KIOWA

Member FDIC



From our Sponsors

BUSINESS ★ HOME ★ AUTO ★ HEALTH

INSURANCE

with a *personal touch*

★ All types of court bonds
including Guardian and Probate

★ Insurance coverages for your clients

★ Accurate and efficient



www.rameyking.com

DENTON
(940) 382-9691

DALLAS
(940) 243-4400
metro

FORT WORTH
(817) 431-1141

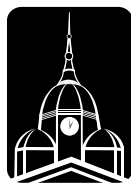
Build your future on our foundation

- Competitive fixed rates for as long as 40 years
- Low down payment
- Over one hundred years of banking experience

Purchase - Refinance - Construction



www.F-S-B.com



ACCESS 1ST CAPITAL BANK

Bringing Community Back to Banking

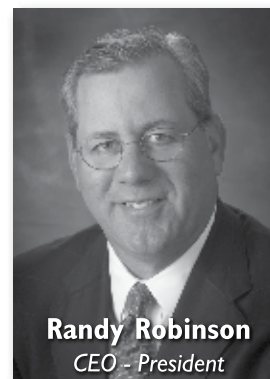
Denton County's
FIRST PRIME PARTNER BANK
for IOLTA accounts

*Unlimited FDIC Coverage for IOLTA Accounts**

COMMUNITY PEOPLE Who Know OUR COMMUNITY!

NE Corner of Eagle Dr. & Carroll Blvd. • Denton, TX • **940.382.3962**

www.access1stcapitalbank.com



Randy Robinson
CEO - President



* Temporary Liquidity Guaranty Program

Denton County Bar Association &
Denton County Alternative Dispute Resolution Program
512 West Hickory Street, Suite 202
Denton, TX 76201

PRESTD
First Class
US Postage Paid
Denton, TX
Permit #1029

DCBA in 2009-10

February Bar Luncheon

Date:

Friday, February 5, Noon
Meal included
0.5 CLE included

Location:

Oakmont Country Club
1901 Oakmont Drive
Corinth, Texas 76210

Program:

The Texas Electronic Transaction Act and Contracts

Speaker:

Kevin Kerr, Esq.

March Bar Luncheon

Date:

Friday, March 5, Noon
Meal included
0.5 CLE included

Location:

Oakmont Country Club
1901 Oakmont Drive
Corinth, Texas 76210

Program:

Immigration 2010: Crossroads for Business and Immigration Reform

Speaker:

Stewart Rabinowitz

Save the Date

What:

Applying Rules of Civil Procedure, Collaboration and Ethics for the Paralegal

When:

Friday, March 26, 2010
1:00 PM – 4:30 PM

Where:

Commissioners Courtroom,
Courthouse-on-the-Square
110 W. Hickory St. in Denton

Registration

Contact Connie Hansen at connie@furlowlegal.com or 972-294-4528 for additional information. 3 hours of CLE.